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1076-AF18

1 message

Alison Harvey <Aharvey@auburnrancheria.com> Wed, Sep 25, 2013 at 5:50 PM
To: "consultation@bia.gov" <consultation@bia.gov>

September 25, 2013

Ms. Elizabeth Appel

Office of Regulatory Affairs & Collaborative Action

U.S. Department of the Interior

1849 C Street NW., MS 4141

Washington, DC 20240

RE: 1076-AF18

Dear Ms. Appel:

I am writing on behalf of the members of the United Auburn Indian Community concerning the Department of the Interior's proposed revisions to regulations governing procedures for establishing that an American Indian group exists as an Indian tribe eligible for federal recognition.

We have deep concerns with many provisions in the proposed revisions that would reverse long standing policy and settled law by weakening the recognition standards so substantially that tribal sovereignty and the meaning of a government-to-government relationship would be threatened.

If the Department is seeking to eliminate delay and backlog in the recognition process, there are improvements to the system that could be made. But lowering the bar for recognition should not be

considered one of them.

In sum, the proposed regulatory revisions would create a decision making system that is not impartial, that operates under vaguely defined criteria, and that is not subject to appeal to the Interior Board of Indian Appeals.

Among the provisions that concern us are:

- Revisions to Section 83.7 (c) shorten the period in which the petitioner maintained political influence or authority over its members from "historical times" to 1934. In addition, the language says that the influence or authority must be without "substantial interruption." Whether an interruption was "substantial" would be determined by the OFA.

- In Section 83.6 (d) (1), the OFA would have to consider that a standard has been met if "a preponderance of the evidence supports the validity of the facts claimed *when viewed in the light most favorable to the petitioner...*" This lowers the standard even further when combined with existing language requiring that historical information presented by a petitioner merely has to show a "reasonable likelihood" of being true and that "conclusive proof" is not required.

- The regulatory process requires the OFA to offer preliminary reviews of petition materials and to carry on continuing conversations with petitioners as the petition progresses through the system. The proposed regulations even require the OFA to assist a petitioning group in challenging a proposed finding that it disputes. How can this be an impartial decision making process under these review standards? The OFA would be both the decision maker and the advocate for a petition.

- In Section 83.8, a tribe may gain recognition by presenting evidence of a previous federal acknowledgement, but the standard for that evidence is vague, open-ended, and at the discretion of the OFA, which would be required to make its determination "in the light most favorable to the petitioner."

- In Section 83.7 (e), the proposed revisions would drop the requirement that the members of the Indian group are descended from a historical Indian tribe. Instead only some undetermined percentage of the members would actually be required to have ancestors who are descended from a historical Indian tribe. In that same section, the new language would allow evidence about descent from historians or anthropologists using historical records that they created.

- The proposed regulations drop the authority of the independent Interior Board of Indian Appeals to review an OFA decision, thus requiring an aggrieved party to enter into expensive and time-consuming litigation.

Federal recognition is more than creating eligibility for federal programs – it is a determination that an Indian tribe has a consistent record of acting as a sovereign government entity with historic roots that extend to the time before non-Indian settlement. The proposed regulatory revisions cheapen that standard to the detriment of the nation's Indian tribes and their government-to-government relationship with the United States. We urge you to focus on revisions that reduce the delays and backlogs in the process.

Sincerely,

S/ Gene Whitehouse, Tribal Chairman
